IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

MFA.No. 827 of 2001()

(OPMV.473/1997 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MUVATTUPUZHA)
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APPELLANT:

ABOOBACKER,
S/O.MAKKAR,
POOKUZHY VEEDU,
NELLIKUZHI P.O.

BY ADV. SRI.RAJESH VIJAYAN

RESPONDENTS:
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1. A.G. BIJI, ALAKARA VEEDU,
ADIMALI P.O.,
MANNAMKANDAM.

2. HAMEED N.M., S/O.MEERAN,
NANETH VEEDU,
ELAMBRA,
NELLIKUZHI P.O.

3. THE ORIENTIAL INSURANCE CO. LTD.,
DIVISIONAL OFFICE, SHAM COMPLEX,
1ST FLOOR, BAZAR ROAD.

R1 BY ADV. SRI.VARGHESE PARAMBIL
R3 BY ADV. SRI.A.R.GEORGE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 827 of 2001

Dated this 12th day of September, 2007

JUDGMENT

Koshy, J:

The appellant suffered serious injuries in an accident on 3.1.1997. He was travelling accompanying the goods in a mini lorry KL-7-J-4831. He was 36 years old at that time. He was doing business in hill produce and was travelling in connection with the above business. When the lorry reached at Edappally, it capsized due to the negligence of the driver of the vehicle. As a result, serious injuries were caused to him. Immediately after the accident he was taken to the Lissie Hospital. He was an inpatient till 24.1.1997. He was again re-admitted. The MRI report shows the following injuries:

> "* Shows a C5 - C6 disc protrusions compressing the cord.
>
> * Bilateral neural foraminal narrowing.
>
> * Focal bright signal within the cord at that level is suggestive of oedema.
>
> * C1 - C5 - C7 disc protrusions indenting the thecal sac and narrowing the spinal canal".

2. Exhibit A2 is the discharge summary issued from the department of Neuro Surgery, Lissie Hospital. MRI scan report very clearly shows that there was lumber buckling of L4 anterior, C4 and C5 disc protrusion compressing cord. The Medical Board constituted under the Kottayam Medical College Hospital certified that there is 30% disability. It has also

come out in evidence that he had regular follow up treatment about 10 times. He was hospitalised on 3.7.1998 and was discharged on 20.7.1998. He was complaining of paralysis of the right leg and right hand. He was unable to sit down and lift anything from the ground and he was unable to turn his neck. He continues to have back pain and neck pain. According to him he cannot walk or sit for a long time. He was advised to wear cervical collar. According to him, his monthly income was Rs.2700/-. The Tribunal did not accept this as no evidence was adduced to substantiate his income. The Tribunal fixed the income at Rs.1500/- per men sum. The accident occurred in 1997. He was a business man. He was maintaining a family. We are of the opinion that, at least, Rs.2000/- ought to have been taken as the monthly income. Considering the various scan report etc. we are of the opinion that merely because doctors were not examined, the certificate issued by the Medical Board should not have been discarded. According to the Tribunal, he can continue his business by wearing cervical collar. Considering the details of the treatment, discharge summary, MRI scan report etc. we are of the opinion that the Tribunal ought to have accepted 30% disability. The genuineness of the certificate is also not disputed. The Tribunal has taken 16 as the multiplier taking guidance 2nd schedule. We are not changing the same. Therefore, compensation payable for 30% disability will be Rs.1,15,2000/- (2000 x 12 x30/100 x16). The Tribunal has granted only Rs.23,040/- for disability and loss of earing power. After deducting the same, additional compensation payable will be Rs.92160/-.

The Tribunal calculated the loss of earning for four months at Rs.6,000/-. Since we have taken Rs.2000/- as monthly income, the appellant is entitled to Rs.2000/- more on this count. Hence, additional compensation of Rs.94160/- shall be deposited by the 3rd respondent Insurance Company with 7% interest from the date of application till the date of deposit. On deposit of the amount, the appellant is allowed to withdraw the same.

Appeal is partly allowed.

Sd/-
J.B. KOSHY,
Judge.

Sd/-

K. HEMA,
Judge.

krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 827 of 2001

12th day of September, 2007

JUDGMENT